

REMARKS

Reconsideration is respectfully requested.

Withdrawn claims 8, 9 and 11-25 have been canceled, leaving claims 1-7 and 10 in the application. Claim 1 has been amended.

Claim 1 has been amended to address the rejection of claims 1, 4-6 and 10 under 35 U.S.C. 102(b) as being anticipated by Bennett (U.S. 4,732,287), and the rejection of claims 2, 3 and 7 under 35 U.S.C. 103 as being unpatentable over Bennett in view of Nicholson (US 5,138,738). Claim 1 now recites that (1) the package is hermetically sealed by virtue of the hermetic closure, and (2) that the hermetic closure attaches the first end portion of the package to the intermediate portion of the handle.

The anticipation reference of Bennett is directed to a nail polish applicator in which a "hollow plastic member" has portions 12 and 18 and is sonically welded at 24 to a "hollow cylinder" 10 containing fluid. As shown in Figs. 1-2, the sonic weld 24 is between the surface 20 on the member 12/18 and the inside wall at the top of the cylinder 10. A breakable sealing means 28 is formed between the member 12/18 and an "elongated plastic element" 26 that mounts brush bristles 32. The sealing means 28 allows the brush unit 26/32 to be separated from the member 12/18 and the cylinder 10. See Figs. 2-4.

The Office Action asserts that the cylinder 10 and the member 12/18 (i.e. 10 + 12/18) collectively correspond to applicants' claimed package, and that the brush unit 26 and brush bristles 32 (i.e., 26 + 32) collectively correspond to the claimed applicator with its handle and fluid holding element. The sonic weld at 24 is said to represent the claimed hermetic closure between a first end portion of the package and an intermediate portion of the handle, and the breakable seal means 28 is said to be the claimed breakable portion of the package.

The problem with this characterization is that there is no apparent hermetic closure in Bennett between a top portion of a package and an intermediate portion of a handle. Specifically, the sonic weld 28 is at an intermediate portion of the structure represented by 10 + 12/18 that is said to be the claimed package. It does not connect to the structure 26 that is said to be the claimed handle. Rather, the sonic weld 28 attaches the member 12/18 to the cylinder 10, and these elements are said to be part of the claimed package, not the claimed handle.

Upon first reading the Office Action, applicants' undersigned representative speculated that perhaps the Office Action was asserting that the sonic weld 28 is situated vertically *between* the top end 12 of the member 12/18 and an intermediate portion of the structure 26 (as can be seen in Fig. 2 of Bennett). Applicants' representative further surmised that the Office was contending that this arrangement satisfied the language of claim 1 reciting a hermetic closure *between* a first end portion of the package and an intermediate portion of the handle. It was thought that even though applicants intended this claim language to mean a connection between the package and the handle, that the Office was perhaps contending that a broader reading is possible. To clarify this seeming ambiguity, claim 1 now recites that the hermetic closure *attaches* a first end portion of the package to an intermediate portion of the handle. It will be seen in Bennett that the sonic weld 24 does not satisfy this limitation because it is merely a bond between two structures that the Office contends is the claimed package, and does not connect to anything that is argued to be the claimed handle.

In order to be sure of the Office's interpretation of Bennett, applicants' undersigned representative conducted a telephonic interview with the Examiner on September 26, 2005.

During this interview, it became apparent that the foregoing explanation of why the sonic weld 28 allegedly satisfied the claimed hermetic closure is not what the Office had in mind after all. Rather, the Office apparently views the claimed package as reciting an overall assembly that somehow includes the handle. This interpretation is apparently based on the recitation of a "hermetically sealed package" at line 2 of claim 1, it being the Office's opinion that something cannot be hermetically sealed unless it is attached to something else. By the present amendment, claim 1 has been amended to eliminate "hermetically sealed" from line 2 of claim 1, and to amend lines 9-10 of claim 1 to recite that the hermetic closure hermetically seals the package to the handle such that the fluid holding interior region (of the package) is hermetically sealed. This should help clarify the nature of the claimed package. Note moreover, that claim 1 is directed to a "disposable single-use applicator assembly," of which the package is just one element.

For additional clarification when reading claim 1, it may be helpful to correlate the claim elements (without limiting their scope) to the structural elements in Figs. 1 and 2 of applicants' drawings. In claim 1, the claimed package correlates to element 4 of the drawings, which contains the fluid 6. The claimed applicator correlates to element 8 of the drawings. The claimed handle correlates to element 10 of the drawings. The claimed fluid holding element correlates to element 12 of the drawings. The claimed hermetic closure correlates to the connection between elements 16 and 18 of the drawings. The claimed breakable portion correlates to element 20 of the drawings.

In view of the foregoing, the nature of the claimed subject matter should now be clear, and it should be beyond dispute that Bennett as interpreted by the Office does not disclose all of the elements of claim 1.

Interestingly, an alternative interpretation of Bennett that was set forth at the end of the telephonic interview, but this interpretation also fails to anticipate claim 1. According to the alternative interpretation, Bennett's cylinder 10 is the claimed package and the elements 21, 18 and 26 collectively provide the claimed handle. The sonic weld 24 then becomes an attachment between a top portion of a package (the cylinder 10) and an intermediate portion of a handle (element 18). The sealing means 28 is then argued to be the claimed breakable portion proximate to the hermetic closure. The problem with this interpretation of Bennett is that the last two clauses of claim 1 state that the breakable portion is part of the package and comprises a frangible seal formed in the package material that allows the package material to be broken. According to the alternative interpretation of Bennett, the sealing means 30 is strictly part of the handle and has nothing to do with the package. Thus, the alternative interpretation of Bennett also fails to support an anticipation rejection of claim 1.

Insofar as independent claim 1 recites limitations not found in Bennett, the anticipation rejection under 35 U.S.C. 102 cannot be supported by that reference, as required by well settled law. Claim 1 should therefore be allowable. Claims 4-6 and 10, which depend from claim 1, and were also rejected under section 102, should likewise be allowable. Claims 2, 3 and 7, which were rejected as being obviousness under 35 U.S.C. 103 over Bennett in view of Nicholson, should similarly be allowable based on the amendments to claim 1.

In view of the foregoing, Applicants respectfully request that all rejections be withdrawn and that Notices of Allowance and Allowability be issued.

Respectfully submitted,



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